

Timothy J. Feulner
4117 S. Hatch
Spokane, WA 99203
509-209-7928

Honorable Lonny R. Suko

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

Timothy J. Feulner,)	Case Number:
)	
Plaintiff)	CV-10-0266-LRS
)	
vs.)	PLAINTIFF'S FIRST AMENDED
)	COMPLAINT
AAA Credit Service Collection)	
)	
Agency, Inc., Pam Hart, Andrew)	PLAINTIFF DEMANDS TRIAL BY
)	JURY
Gomez,)	
)	
Defendants.)	
)	

FIRST AMENDED COMPLAINT

Plaintiff Timothy Feulner, acting *pro se*, brings this amended complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) against the above-named Defendants, and alleges the following:

I. Introduction

1. Plaintiff brings this action seeking declaratory relief and damages under the Fair Debt Collection Practices Act, the Washington State Consumer Protection Act, and the common law of Washington.

II. Subject Matter Jurisdiction

2. This is a civil action arising under the Fair Debt Collection Practices Act. The District Court has jurisdiction pursuant to 28 U.S.C. § 1331.

3. The District Court has supplemental jurisdiction over Plaintiff's Washington State law claims pursuant to 28 U.S.C. § 1367 because the claims arise out of the same operative facts, as subsequently alleged.

III. Venue

4. This District Court has venue under 28 U.S.C. § 1391 because a substantial amount of the events giving rise to Plaintiff's claims took place in Spokane County, Washington.

1 **IV. The Parties**

2 5. Defendant, AAA Credit Service Collection Agency, Inc. (hereinafter
3 AAA), is a corporation incorporated under the laws of California with its principal
4 place of business in California.

5 6. AAA is a corporation whose primary purpose is to collect debts, and
6 AAA uses methods of communication, including but not limited to
7 telecommunications and the mails, to conduct its business across state lines.

8 7. Defendant Pam Hart is the Office Manager of AAA. As AAA's
9 office manager, Ms. Hart uses interstate methods of communication, including but
10 not limited to telecommunications and the mails, to collect and attempt to collect
11 debts that are allegedly owed to other persons or organizations.

12 8. Andrew Gomez¹ is an employee of AAA. As an employee of AAA,
13 Mr. Gomez uses interstate methods of communication, including but not limited to

14 _____
15 ¹ Andrew Gomez was named as an original Defendant in this action. Plaintiff has
16 attempted to get Mr. Gomez to waive service and has also attempted to serve Mr.
17 Gomez. These attempts have been unsuccessful. An employee of AAA told the
18 process server that Mr. Gomez currently works for AAA at "another job site" but
19 refused to provide the address. Plaintiff's attempts to locate this "other" location
20 have been unsuccessful to this date.

1 telecommunications and the mails, to collect and attempt to collect debts that are
2 allegedly owed to other persons or organizations.

3 9. Plaintiff is a legal resident of Washington State and is a consumer as
4 defined by 15 U.S.C. § 1692a.

5
6 **V. General Allegations**

7 10. Around May 23, 2010, an individual identifying herself as an
8 employee of AAA called Plaintiff's permanent residence in Spokane, Washington.

9 11. On May 25, 2010, Defendant Pam Hart sent a letter to Plaintiff's
10 permanent residence in Spokane, Washington, claiming that an account from
11 "Intouch Wireless" had been assigned for immediate collection. This letter was
12 addressed to "Timothy Feulner" and "Nuria Perez" at "4117 S. Hatch St; Spokane,
13 WA 99203." A copy of the letter from AAA dated May 25, 2010, is attached,
14 marked Exhibit A, and incorporated by reference.

15 12. Attached to this letter was a contract that was allegedly from "Intouch
16 Wireless" and which allegedly bore Plaintiff's signature along with the signature of
17 "Nuria Perez." A copy of the document that Plaintiff received around May 25,
18 2010, is attached, marked Exhibit B, and incorporated by reference.

19 13. Plaintiff had never seen a copy of this contract until he received this
20 copy in the mail with the letter dated May 25, 2010. The signature on this

1 document is not the Plaintiff's signature. Plaintiff has never had a wireless phone
2 contract with "Intouch Wireless" or T-Mobile.

3 14. The contract contained no date or any indication of the place in which
4 the contract was allegedly signed. The contract did not contain any other
5 identifying information for either "Nuria Perez" or "Timothy Feulner" except for
6 Nuria Perez's credit card information.

7 15. Defendants tried to intimidate Plaintiff into paying this debt even
8 though Defendants knew that Plaintiff was not legally responsible for this debt.

9 16. Plaintiff has never known a "Nuria Perez." Plaintiff's parents have
10 lived at 4117 S. Hatch St., Spokane, Washington 99203 since 1979. From 1979 to
11 2010, no individual named Nuria Perez has resided even on a temporary basis at
12 4117 S. Hatch St., Spokane, Washington 99203. To the best of Plaintiff's
13 knowledge, no "Nuria Perez" has ever entered the house at 4117 S. Hatch St.,
14 Spokane, Washington 99203.

15 17. Because the contract was not dated, Plaintiff has no way to determine
16 in which city Plaintiff resided at the time that this document was signed.

17 18. Because the contract does not have a location, Plaintiff has no way to
18 determine in which city the document was signed.

19 19. AAA failed to provide this information knowing that the alleged debt
20 was not Plaintiff's and that their failure to provide such information would make it

1 almost impossible for Plaintiff to dispute the debt. Such failure demonstrates
2 AAA's complete lack of good faith in attempting to collect this debt.

3 20. The contract does state that the two individuals who signed the
4 contract were issued phone numbers with the area code "415." The area code 415
5 is the telephonic area code for San Francisco, California. If the contract was
6 signed in San Francisco, California, Plaintiff was unlikely to have been physically
7 present in California at the time of the contract because Plaintiff has not entered
8 the state of California from May 2008 until the filing of this action.

9 21. From May 2008 to August 2009, Plaintiff resided and worked in
10 Spokane, Washington. From August 2009-May 2010, Plaintiff resided in
11 Washington, D.C., while attending Georgetown Law School. From May 2010
12 until the filing of this action, Plaintiff resided and worked in Spokane, Washington.

13 22. After receiving the letter dated May 25, 2010, Plaintiff attempted to
14 notify AAA that Plaintiff was not the person responsible for the debt. Plaintiff was
15 told that Defendant Pam Hart was the only person that could help him and that
16 Pam Hart could contact him via email. As a result of this statement, Plaintiff gave
17 AAA his personal email address.

18 23. On June 2, 2010, Plaintiff received a fraud package from a person
19 identifying herself as Pam Hart. This "fraud package" requested, among other
20 things, Plaintiff's social security number. By sending the fraud package Ms. Hart

1 implied that Plaintiff was under an obligation to verify the debt even though
2 Ms. Hart knew that it was AAA's obligation to verify the debt.

3 24. On June 2, 2010, Plaintiff responded to Pam Hart's email by saying
4 that he disputed the validity of the debt pursuant to section 803(a)(4) of the Fair
5 Debt Collections Practices Act, which has been codified as 15 U.S.C. § 1692g.
6 Plaintiff also notified Pam Hart that he had not been physically in California since
7 at least 2008. Finally, Plaintiff requested that Defendants cease communicating
8 with him in pursuant to section 805(c) of the Fair Debt Collection Practices Act,
9 which has been codified as 15 U.S.C. § 1692c(c).

10 25. After Plaintiff notified AAA that he disputed the validity of the debt,
11 Defendants did not cease collection of the debt, obtain a copy of a verification of
12 the debt, or obtain a copy of a judgment concerning the debt as required by the Fair
13 Debt Collection Practices Act. *See* 15 U.S.C. § 1692g(b) (2006).

14 26. On June 3, 2010, Plaintiff placed a fraud alert on his credit report as a
15 direct result of Defendants' false statements about this debt. This credit alert,
16 which was a direct and foreseeable result of Defendants' misrepresentations, has
17 caused Plaintiff significant and needless inconvenience and embarrassment,
18 including Plaintiff having to explain the fraud alert to a potential landlord, a cable
19 company, and other individuals. This landlord later refused to lease the residence
20

1 to the Plaintiff and the other potential lessees citing concerns about Plaintiff's
2 credit situation as one reason for not renting the residence.

3 27. On June 25, 2010, Plaintiff received a letter from AAA notifying him
4 that if he did not pay his account by June 29, 2010, that AAA would report him to
5 a credit reporting agency and that this would "go against his credit." A copy of the
6 letter from AAA dated June 22, 2010, is attached, marked Exhibit C, and
7 incorporated by reference.

8 28. On June 25, 2010, Plaintiff attempted to contact AAA again. Plaintiff
9 spoke to Andrew Gomez. At the beginning of the conversation, Plaintiff was
10 informed by Mr. Gomez that the conversation would be recorded for purposes of
11 "quality control." Plaintiff reiterated to Mr. Gomez that he was not responsible for
12 this loan and had not been in California since at least 2008. Mr. Gomez claimed
13 that he knew that Plaintiff had signed the contract because the individual had used
14 Plaintiff's license when buying the phone.

15 29. Mr. Gomez then asked Plaintiff a series of questions including if
16 Plaintiff had ever lost his driver's license. Plaintiff told Mr. Gomez that to the best
17 of Plaintiff's knowledge he had never lost his driver's license because Plaintiff
18 believed at the time and still believes that he has never lost his driver's license.
19 Mr. Gomez responded by telling Plaintiff that AAA now had an audio recording of
20

1 Plaintiff admitting that he had never lost his license, and Mr. Gomez indicated that
2 this recording gave AAA proof that Plaintiff was responsible for this debt.

3 30. Mr. Gomez's statement that Plaintiff's statements provided AAA with
4 definitive proof that the debt was the Plaintiff's was false and misleading.

5 Mr. Gomez's statements and the use of recording a phone conversation in an
6 attempt to intimidate Plaintiff to pay a debt that Plaintiff was not responsible for
7 was an unconscionable and unfair means of collecting a debt.

8 31. Mr. Gomez's continued reference to AAA having Plaintiff's driver's
9 license without providing such proof and knowing that Plaintiff had no way to
10 verify such a claim was an unconscionable and unfair means of collecting a debt.

11 32. This conversation caused Plaintiff to suffer immediate emotional
12 distress because of the prospect that AAA's threatened actions would affect his
13 ability to obtain loans for his law school. Plaintiff has continued to suffer
14 emotional distress and has had to devote over four months trying to deal with
15 Defendants' completely baseless threats and attempts to collect on a debt that
16 Defendants know is not Plaintiff's debt.

17 33. Defendants intentional and malicious attempts to collect on a debt that
18 they knew was not the Plaintiff's were calculated to waste Plaintiff's time and
19 energy thereby making Plaintiff more likely to give into their intimidation and
20 harassment and pay the debt just so the Defendants would leave him alone.

1 Defendants' actions represent a widespread, illegal collection agency practice
2 intended to make consumers pay debts that are not theirs rather than spend the time
3 and energy disputing the debt.

4 34. Plaintiff has also attempted to contact the original creditor Intouch
5 Wireless. Intouch Wireless did not return Plaintiff's phone calls. Intouch Wireless
6 failed to return Plaintiff's phone calls as a direct result of AAA's practice to
7 instruct creditors to ignore calls from the consumers.

8 35. On June 25, 2010, Plaintiff filed a police report with the Spokane
9 County Police Department indicating that Plaintiff believed he had been a victim
10 of identity theft. Plaintiff's report was assigned police report # 10203586.

11 36. On June 25, 2010, Plaintiff filed a report with the Federal Trade
12 Commission indicating that a credit collection agency was attempting to collect on
13 a loan that the collection agency knew was not his and that Plaintiff had asked the
14 collection agency to stop contacting him. Plaintiff's report was assigned
15 # 26851917.

16 37. On June 25, 2010, Plaintiff sent an email to the Washington State
17 Department of Licensing requesting assistance because Plaintiff believed that
18 someone had fraudulently obtained his driver's license information.

1 38. On June 29, 2010, Plaintiff spoke to Sue Clovis, an Investigator for
2 the Washington State Department of Licensing. Ms. Clovis informed Plaintiff that
3 there had been no fraudulent activity or suspicious activity on Plaintiff's license.

4 39. On July 6, 2010, Plaintiff requested a credit report from Experian.
5 The credit report indicated that AAA had not reported the alleged outstanding loan
6 to the credit reporting agency. Defendants' statements that they were going to
7 report the debt to a credit reporting agency on June 29, 2010, unless Plaintiff paid
8 the debt were knowingly false. These statements were an unfair and
9 unconscionable attempt to collect a debt.

10 40. On July 28, 2010, Susan Feulner took a call from Pam Hart requesting
11 that Plaintiff contact her immediately. Pam Hart attempted to contact Plaintiff on
12 July 28, 2010, despite Plaintiff's request that AAA stop contacting him.

13 41. On August 17, 2010, Pam Hart left a message on an answering
14 machine at Plaintiff's permanent residence requesting that Plaintiff contact her
15 immediately. Pam Hart attempted to contact Plaintiff on August 17, 2010, despite
16 Plaintiff's request that AAA stop contacting him.

17 42. On August 17, 2010, Pam Hart sent Plaintiff three emails each with
18 one attachment. One email's attachment indicated that if Plaintiff did not pay the
19 debt immediately AAA would authorize their attorney to "institute suit and/or legal
20 action to recover your debt." The second email's attachment asked for information

1 including Plaintiff's social security number to determine the fraud status of the
 2 account. The third email's attachment indicated that the debt had not been
 3 reported to a credit agency but would be reported if not paid on August 24, 2010.
 4 A copy of the email attachment dated August 17, 2010, threatening to report the
 5 debt to a credit reporting agency is attached, marked Exhibit D, and incorporated
 6 by reference. A copy of the email attachment dated August 17, 2010, threatening
 7 to refer the matter to AAA's attorney is attached, marked Exhibit E, and
 8 incorporated by reference.²

9 **First Cause of Action**

10 Failure to Cease Communications (15 U.S.C. § 1692c)

11 43. Plaintiff restates and reincorporates by reference each and every
 12 allegation stated in paragraphs 1-42 above.

13 44. Defendants continued to communicate and attempt to communicate
 14 with Plaintiff through phone calls, letters, and emails after Plaintiff requested that
 15 Defendants cease communication on June 2, 2010.

16
 17 ² Even after the initiation of the present action, Defendants have still attempted to
 18 collect this debt from the Plaintiff. On November 4, 2010, despite having been
 19 notified of the present action, Defendant Hart called Plaintiff's permanent
 20 residence attempting to collect this debt.

1 45. Defendants communications were not attempts to notify him that
2 AAA were invoking a specific remedy or ceasing collection actions.

3 46. Even if any of AAA's communications after June 2, 2010, can be
4 construed as attempts to notify him that AAA was invoking a specific remedy, they
5 were false representations because AAA never pursued or intended to pursue such
6 threatened remedies.

7 47. Even if any of the communications after June 2, 2010, can be
8 interpreted as notification of AAA's intention to invoke specific remedy, AAA is
9 only entitled to one such communication.

10 48. Defendants' actions were not undertaken in good faith and violated
11 15 U.S.C. § 1692c(c).

12
13 **Second Cause of Action**

14 Harassment and abuse (15 U.S.C. § 1692d)

15 49. Plaintiff restates and reincorporates by reference each and every
16 allegation stated in paragraphs 1-48 above.

17 50. Defendants' repeated calls and multiple notices that they were
18 notifying credit reporting agencies were intended to harass Plaintiff, especially in
19 light of Defendants' knowledge that Plaintiff was not legally responsible for this
20 debt.

1 51. Defendants' actions were not undertaken in good faith and violated
2 15 U.S.C. § 1692d.

3
4 **Third Cause of Action**

5 False and Misleading Representations (15 U.S.C. § 1692e)

6 52. Plaintiff restates and reincorporates by reference each and every
7 allegation stated in paragraphs 1-51 above.

8 53. Defendants' failure to provide Plaintiff with a contract that contained
9 a date or a location was an attempt to get Plaintiff to pay for a debt that was not
10 legally enforceable and for which Defendants knew Plaintiff was not legally
11 responsible.

12 54. Defendants' assertion that Plaintiff used his driver's license when
13 signing the alleged contract and that the Defendants had a copy of Plaintiff's
14 driver's license was a false and misleading representation.

15 55. Mr. Gomez's assertion that AAA could use a recording of Plaintiff's
16 statements that Plaintiff did not believe he had lost his driver's license as proof
17 that Plaintiff was legally responsible for the debt was a false and misleading
18 attempt to collect a debt.

19 56. Defendants' assertions on June 22, 2010, and August 17, 2010, that
20 they were reporting Plaintiff's debt to a credit reporting agency and were referring

1 the matter to their lawyer were false and misleading because the Defendants had no
2 intention of taking such actions.

3 57. Defendants' actions were not undertaken in good faith and violated
4 15 U.S.C. § 1692e.

5 **Fourth Cause of Action**

6 Unconscionable Practices (15 U.S.C. § 1692f)

7 58. Plaintiff restates and reincorporates by reference each and every
8 allegation stated in paragraphs 1-57 above.

9 59. Defendants intentionally provided Plaintiff with a notification of the
10 debt that did not include the date that the debt was incurred or the location for the
11 alleged contract. Defendants did this knowing that such notification would prevent
12 Plaintiff from being able to adequately dispute the debt and intending to get
13 Plaintiff to pay for a debt that Defendants knew was not Plaintiff's debt. This
14 intentional omission was an unconscionable and unfair practice used in an attempt
15 to collect a debt.

16 60. Mr. Gomez's assertion that Plaintiff's statements on a recorded
17 telephone call provided AAA with definitive proof that Plaintiff was legally
18 responsible for the debt was an unfair and unconscionable practice used in an
19 attempt to collect a debt.
20

8

10	Failure to validate debt (15 U.S.C. § 1692g)
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64. Defendants as debt collectors are obligated to verify a debt or obtain a copy of a judgment related to the debt upon written notice from the consumer that the debt is disputed, and Defendants must provide a copy of such verification or judgment before attempting to contact the consumer again.

19

1 66. Defendants have never provided verification or a judgment of the debt
2 and have continued to contact Plaintiff despite their failure to provide such
3 verification.

4 67. Defendants actions were not undertaken in good faith and violated
5 15 U.S.C. § 1692g.

6 **Seventh Cause of Action**

7 Unfair and Deceptive Trade Practices (Wash. Rev. Code § 19.86)

8 68. Plaintiff restates and reincorporates by reference each and every
9 allegation stated in paragraphs 1-67 above.

10 69. Washington State law requires all persons acting as collection
11 agencies to obtain a license from the Washington State Director of Licensing. This
12 requirement applies equally to out-of-state collection agencies. Wash. Rev. Code
13 § 19.16.110

14 70. Defendants, as persons whose activities within this state are limited to
15 collecting debts from debtors located in this state by means of interstate
16 communications, are out-of-state collection agencies under Washington State law.
17 Wash. Rev. Code § 19.16.100.

18 71. Defendants are not licensed in Washington State to collect debts.

1 72. Washington State law requires a collection agency to provide the
2 consumer with an itemization of the claim allegedly owed by the consumer on its
3 initial notice. Wash. Rev. Code § 19.16.250.

4 73. Defendants' initial communication did not contain the full itemized
5 breakdown of the amount being collected that is required by Washington State law.

6 74. Washington State law forbids a debt collector from threatening the
7 impairment of the consumer's credit rating if a claim is not paid. Wash. Rev. Code
8 § 19.16.250.

9 75. Washington State law forbids a debt collector from communicating
10 with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or
11 embarrass a debtor. Wash. Rev. Code § 19.16.250.

12 76. AAA's attempts to collect a debt which AAA knew the Plaintiff was
13 not legally obligated to pay were attempts to threaten, harass, and intimidate the
14 Plaintiff.

15 77. AAA's letters dated June 22, 2010, and August 17, 2010, threatened
16 Plaintiff with impairment of his credit rating despite the fact that AAA never
17 intended to take the threatened action because AAA knew that Plaintiff was not
18 legally responsible for this debt

19 78. Washington State law forbids a debt collector from threatening the
20 take action which cannot be legally taken. Wash. Rev. Code § 19.16.250.

79. Defendants repeated threats to collect on a debt that they knew was not legally enforceable against Plaintiff were threats to take actions which they could not legally take.

80. Violations of the aforementioned Washington State laws are unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Washington State Consumer Protection Act. Wash. Rev. Code § 19.16.440.

Eighth Cause of Action

Invasion of Privacy

81. Plaintiff restates and reincorporates by reference each and every allegation stated in paragraphs 1-80 above.

82. Defendants intentionally intruded on Plaintiff's solitude and seclusion in violation of Washington State law. *See Mark v. Seattle Times*, 96 Wash. 2d 473, 497 (1981).

83. Defendants invaded Plaintiff's solitude by sending him letters, calling him, and speaking to him via telecommunications. In the course of these conversations, Defendants both implied and specifically stated that Plaintiff was a liar and was in default of his financial obligations.

1 84. A reasonable person would find such repeated accusations to be
2 highly offensive.

3 **VI. Damages**

4 85. Plaintiff requests \$5,000 in compensatory damages from Defendants
5 to compensate for any emotional trauma, time wasted dealing with Defendants'
6 frivolous accusations, embarrassment resulting from Plaintiff having to place a
7 fraud alert on his credit, and other potential future effects on Plaintiff's credit that
8 Defendants' actions have caused.

9 86. Plaintiff requests that any compensatory damages be trebled according
10 to Washington State law. Wash. Rev. Code § 19.86.090.

11 87. Plaintiff requests \$5,000 in presumed damages for Defendant's
12 invasion of his privacy.

13 88. Plaintiff requests \$1,000 in statutory damages under 15 U.S.C.
14 § 1692k from each Defendant.

15 89. Plaintiff requests \$5,000 in punitive damages from Defendant Pam
16 Hart.

17 90. In light of the egregiousness of Defendants' conduct, Plaintiff requests
18 \$75,000 in punitive damages from Defendant AAA Credit Service Collection
19 Agency, Inc.
20

1 91. Plaintiff requests a declaratory judgment stating that the Plaintiff is
2 not legally responsible for this debt and barring AAA from collecting debts in
3 Washington State until they comply with the Washington State licensing
4 requirement.

5 92. Plaintiff requests his legal costs including his filing fee and other
6 reasonable legal costs.

7 93. Plaintiff requests any other relief that the Court determines is
8 equitable and just.

9
10 **VII. Demand for a Jury Trial**

11 Plaintiff demands a jury trial.

12
13 RESPECTFULLY SUBMITTED this 3rd day of January 2011.

14 s/ Timothy Feulner
15 Timothy Feulner
16 Plaintiff
17 4117 S. Hatch
18 Spokane, Washington 99203
19 Telephone: 509-209-7928
20 Email: tjf47@law.georgetown.edu

Certificate of Service

I hereby certify that on January 3, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Thomas J. Miller.

s/ Timothy Feulner
Timothy Feulner
Plaintiff
4117 S. Hatch
Spokane, Washington 99203
Telephone: 509-209-7928
Email: tjf47@law.georgetown.edu